IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8292 OF 2005

Balchandra Gopal Gawad alias
Gawde & Ors. .. Petitioners.

vs.

Prakash Janardan Gawad .. Respondent.

Mr. Clive D'Souza for petitioners.
Mr. P.G. Karande for respondent.

CORAM : S.U. KAMDAR, J.
DATE : 6th December, 2005.

P.C.:

. The present petition challenges the order dated 2.11.2004 dismissing the application for bring the legal heirs of the petitioner on record. There is a delay of around 422 days. The trial Court has after considering the matter refused to condone the delay and permit the legal heirs to be brought on record. The trial Court has come to the conclusion that there is no satisfactory explanation for setting aside the abatement and for permitting the legal heirs to be taken on record. In my opinion, the approach of the trial Court is erroneous. The

trial Court has to keep in mind that substantial justice is not affected and the technical and procedural matters should not take precedence over substantial justice. The Apex Court in the case of Mithailal Dalsangar Singh and others vs. Annabai Devram Kini and others, reported in AIR 2003 SC 4222 in para 9 thereof has already held that the Court in case of bringing legal heirs on record should be liberal. In that view of the matter, the impugned order passed by the trial Court is unsustainable in law. The order dated 2.11.2004 passed by the Chief Judge on Misc. Notice No. 257 of 2003 is quashed and set aside. The petitioner is directed to pay costs to the respondent quantified at Rs. 5000/-. Misc. Notice No. 257 of 2003 is granted. The petitioners are permitted to bring the legal heirs on record. Amendments to be carried out within two weeks and the trial Court to proceed with the matter on the basis of the said amendment. Abatement, if any, is set aside. Petition is made absolute accordingly. No order as to costs.